Supreme Court, U.S.
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No. 96-166

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1996

THE KAHRE-RICHARDES FAMILY FOUNDATION, INC., et al.,

Petitioners,

V.

THE VILLAGE OF BALDWINSVILLE, et al.,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Second Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

The Petitioners herein failed to pay their Village of Baldwinsville Real Estate Taxes for the real property involved for the tax year 1975. Petitioners commenced an action in the New York State Supreme Court in 1980 to, inter alia, set aside the Tax Deed issued in 1978 by the Respondent, Village of Baldwinsville to Respondent Rob Roy Pools, Inc. by reason of the unpaid taxes. In 1992 the State Court made a final Judgment and Order granting that Respondent Susan M. Weichert's claim of ownership was absolute and superior to all others, including Petitioners herein. Respondents prevailed on all appeals in the State Courts. In 1994 a second New York State Supreme Court action was commenced by Petitioners against Respondents seeking again, inter alia, to set aside the aforementioned 1978 Tax Deed. Respondents again prevailed in this 1994 State Court action and on appeal from same. Petitioners' Attorney, Barbara Sims, was sanctioned by both the New York State Supreme Court and Appellate Division for litigating and appealing a frivolous lawsuit. Petitioners then commenced this Civil Rights case in the Northern District of New York Federal Court wherein all causes of action against all Respondents were dismissed on Motion for Summary Judgment as barred by application of the doctrine of res judicata. The U.S. Court of Appeals for the Second Circuit unanimously affirmed the lower Court's decision.

The question is: Whether the Court of Appeals erred by affirming the Judgment of the District Court, granting the motion for Summary Judgment dismissing the Complaint?

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No. 96-166

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1996

THE KAHRE-RICHARDES FAMILY FOUNDATION, INC., et al.,

Petitioners,

V.

THE VILLAGE OF BALDWINSVILLE, et al.,

Respondents.

STATEMENT OF THE CASE

This Appeal is from an Order of the Federal District Court, Frederick J. Scullin, Jr., D.J., dated August 16, 1995 and entered August 17, 1995, granting the joint motion of all Respondents for summary judgment on the basis of res judicata, dismissing the cross-claims of Respondents for contribution and indemnity as moot, and denying the joint motion of all Respondents for attorneys' fees and costs without prejudice to renew.

The Complaint alleges violation of various rights of Petitioners, pursuant to §§1981, 1982, 1983, 1985, 1986 and 1988 of Title 42 of the United States Code and violation of Petitioners' rights pursuant to United States Constitution, Fourteenth Amendment because of the "race" of Petitioners.

The gravamen of the Petitioners' Complaint, at paragraph 22 therein (A-57, *references are to the Joint Appendix on Appeal to the United States Court of Appeals for the Second Circuit*); is that all Respondents from "on or about" 1973 until "on or

about" 1994 "...entered into an agreement or mutual understanding with each other and with other unnamed defendants, whereby they would deprive the Plaintiffs of the property referred to herein under color of law and would otherwise deny Plaintiffs' equal rights, privileges and protection of the laws because of their race."*

In its decision, the District Court held that this action is barred by the principle of "res judicata" by reason of two previous actions brought by Petitioners on "identical facts" in the New York State Supreme Court, both of which actions have proceeded to final judgment and through the New York Appellate process to completion (A-39). The Federal District Court determined that the causes of action and theories of recovery of Petitioners in this Federal action..."were as available to the Petitioners in the first New York Supreme Court action concerning the transfer of Applecrest as it is in the present action." The Court further held:

> **Because plaintiffs' previous State and Federal claims originate from the identical facts and the New York State Supreme Court had jurisdiction and "the power to award the full measure of the relief sought in the present action," the New York doctrine of res judicata compels this Court to conclude that the plaintiffs' action is barred.**
>
> **Defendants' motion is granted and the complaint is dismissed with prejudice (A-43).**

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*It should be noted, however, that Susan M. Weichert and the County of Onondaga were not made parties to the New York State Supreme Court Action, which Petitioners commenced in 1980, until the service of an Amended Complaint in 1988.

An action was first commenced by Petitioners against Respondents Village of Baldwinsville, Robroy Pools, Inc. and Robert M. Weichert in 1980, wherein Petitioners, pursuant to the provisions of New York Real Property Actions and Proceedings Law, Article 15, sought to bring an action to quiet title to the property which is the subject of this and the New York State actions located in the Village of Baldwinsville and known as "Applecrest". The Complaint in that action was amended in 1988 to include as Respondents Susan M. Weichert and the County of Onondaga.

The Petitioners in that action sought to attack the validity of a village tax deed given by the Village of Baldwinsville to Robroy in 1978 and the county tax deed given by the County of Onondaga to Susan M. Weichert in 1983.

In that action, Petitioners attacked the validity of the two deeds on all of the grounds which are set forth in their five causes of action alleged in this action before the Federal Court.

Petitioners in the State Court actions, which spread over 14 years, made no allegations relevant to violations of their New York State or federal civil rights nor of their rights under the New York State or Federal Constitutions.

By an Order dated June 26, 1992, the New York State Supreme Court, Onondaga County, Hon. Parker J. Stone, J.S.C. (A-188-191), granted the motion of Susan M. Weichert for Summary Judgment and dismissed the Petitioners' Complaint and amended complaint as to all Respondents and dismissed Petitioners' replies to the counterclaims of Susan M. Weichert and gave her final judgment on her counterclaims pursuant to RPAPL Article 15, and further ordered that Petitioners post an appeal bond in order to stay execution of judgment pending appeal.

That on June 26, 1992 New York State Supreme Court, Onondaga County, Hon. Parker J. Stone, J.S.C., also granted judgment to Susan M. Weichert, awarding her valid, absolute and unencumbered title to the property known as "Applecrest"

and further declaring that any claim which Petitioners have or might claim to have to Applecrest is without validity and of no force and effect and further granting that "plaintiffs and every person claiming under them are forever barred from asserting such claim, the invalidity of which is established in this action, to an estate or interest in the Applecrest property of any kind or nature whatsoever" and further decreed that Susan M. Weichert be awarded possession of the real property along with the costs and disbursements of the action. The Court further ordered that Mrs. Weichert's claim for damages for the withholding of the property be severed and survive the judgment. Mrs. Weichert's claim for damages remains yet to be litigated and is still pending before Justice Stone in State Supreme Court.

In his decision in the said action dated December 18, 1991 (A-245-252), Justice Stone held:

> **...as evidenced by the present amended complaint and prior complaints, as well as their position throughout this extended proceeding, the claims of the Foundation and Pritchard against Robroy are founded on their assertion that the assessment is void, which assertion is foreclosed by the passage of time. Under Kahal,* the foundation and Pritchard are clearly barred from raising the issue of the validity of the assessment as against the Village; accordingly, they must also be barred from attacking the validity of the assessment and disputes with other parties (at A-250).**

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* Kahal Bnei v. Town of Fallsburg (78 NY2d 194)

The Court then went on to state:

> **...the statute of limitations bars Pritchard and the Foundation from attacking Robroy's deed; Robroy has complied with all applicable requirements set forth in Article 14 of the Real Property Tax Law; Robroy's deed is valid; and Robert Weichert has no estate or interest in the property"(at A-252).**

The Court also held with regard to Susan M. Weichert:

> **Susan Weichert claims title to the property by virtue of a deed issued to her by the County of Onondaga on December 13, 1983. Her answer contains a counterclaim wherein she requests judgment declaring her to be the owner of the premises based on this deed. (Applecrest) The validity of this deed and the timeliness of any challenge thereto by Pritchard and the Foundation has not been addressed on this record..."(at A-251).**

The judgment dated June 26, 1992 was thereafter appealed by Petitioners. By orders dated November 19, 1993, the judgment was unanimously affirmed without opinion by the Appellate Division of the Supreme Court of the State of New York, Fourth Department (A-196). The motion for leave to appeal therefrom was denied in the New York Court of Appeals May 12, 1994 (A-200). A copy of Petitioners' Brief on this appeal in the New York State Appellate Division, Fourth Department, is in the record at A-318-331, and a copy of Respondent Susan M. Weichert's Brief in the Appellate Division on the same appeal is in the record at A-332-353.

On or about September 15, 1994, by warrant dated August 3, 1994, and signed by Hon. Parker J. Stone, J.S.C. (A-260, 261),

Petitioners were removed by the Sheriff of Onondaga County from the Applecrest premises and Respondent Susan M. Weichert was put into possession thereof.

Notwithstanding the foregoing decisions, orders and judgments of the Supreme Court and Appellate Courts of the State of New York, Petitioners commenced another action in State Supreme Court against Respondents in April 1994 seeking the exact same relief as in their previous action which had been commenced in 1980.

In response to this action, Respondents once again opposed the action by motion for summary judgment, this time on the ground of res judicata and statute of limitations and sought financial sanctions against Petitioners and their counsel by reason of frivolous conduct.

By Order dated August 3, 1994, Hon. Parker J. Stone, J.S.C. (A-270-273), the complaint was dismissed with prejudice in its entirety as to all Respondents. The court determined that the action of the Petitioners was "frivolous" and was commenced to obstruct the final judgment of the court of June 1992 and to delay the Petitioners' inevitable eviction from the Applecrest premises.

In his decision dated July 20, 1994 upon the said motion (A-266-269), Justice Stone held that the action of Pritchard and the Foundation was barred by the application of the doctrine of res judicata.

In that decision, Justice Stone stated that the Court's judgment of June 26, 1992, was conclusive with respect to all matters which were or could have been litigated in the previous action including all matters pertinent to the interests of Petitioners and Respondents, Robroy Pools, Inc. and Susan M. Weichert as raised by the complaint, counterclaims and replies in that action and all such matters which could have been raised in connection with those claims (emphasis added).

By its Orders and Memorandum Decisions dated September 29, 1995, the New York State Appellate Division, Fourth Department, affirmed the Orders of the Supreme Court dated

August 3, 1994 and November 3, 1994 (A-241-244) and unanimously held as to the August 3, 1994, Supreme Court Order as follows:

> **Order unanimously affirmed without costs, judgment ordered imposing sanction and matter remitted to Supreme Court for further proceedings in accordance with the following Memorandum: we affirm for reasons stated in the decision at Supreme Court (Stone, J.). We add only that these appeals are a continuing effort by plaintiffs' counsel "to delay or prolong the resolution of the litigation" (22 NYCRR 130-1.1[c][2]) and we therefore order that judgment be entered in accordance with 22 NYCRR 130-1.2 imposing a sanction against plaintiffs' counsel in the amount of $500.00. Further, we conclude that plaintiffs' counsel should compensate defendants for "costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees" as a result of these appeals (22 NYCRR 130-1.1[a]).**

And as to the November 3, 1994, Supreme Court Order, the Court held as follows:

> **Order unanimously affirmed without costs, judgment ordered imposing sanction and matter remitted to Supreme Court for further proceedings in accordance with same Memorandum as in Kahre-Richardes Family Foundation v. Village of Baldwinsville, ([appeal no. 1] __AD2d__ [decided herewith]). (Appeal from Order of Supreme Court, Onondaga County, Stone, J. -**

Sanctions.)

Copies of the said Orders of the Appellate Division, both dated September 29, 1995, and the Memorandum Decisions of the Appellate Division relevant to said Orders, both dated September 29, 1995, are attached as Appendices A, B, C and D to this brief.

REASON TO DENY THE WRIT

THE CAUSES OF ACTION SET FORTH IN THE COMPLAINT ARE BARRED BY APPLICATION OF THE DOCTRINE OF RES JUDICATA. THE COURT BELOW DID NOT COMMIT ERROR IN GRANTING SUMMARY JUDGMENT TO ALL RESPONDENTS UPON THEIR JOINT MOTION.

That by reason of the foregoing, it is clear that the issues raised by Petitioners in this action as to the validity and regularity of the tax sale certificates and tax deeds issued by the Village and County to Robroy Inc. and Susan M. Weichert respectively have been fully and finally established in favor of Respondents after plenary action in the Courts of the State of New York and that Susan M. Weichert now holds absolute title to and enjoys possession of the Applecrest property.

Petitioners' Brief creates confusion and misleads this Court concerning the payments/non-payments by the Petitioners of the 1975 and 1976 Village real estate taxes for the property. Petitioners therein assert that a great miscarriage of justice has occurred by the issuance of the tax deeds and the State Court's upholding the same. Petitioners' Brief, at page 6, provides in the first unnumbered paragraph "...[t]he Complaint was amended by Stipulation in 1988, alleging payment of the

taxes...". Petitioners' Brief, at page 7, provides in part in the second unnumbered paragraph on said page that the State Court case granted summary judgment and dismissed the State Court Complaint on the ground that the statute of limitations had run to challenge a specific tax assessment, although no issue had ever been raised regarding any specific tax assessment...". Said Amended Complaint specifically alleges at paragraphs 16 and 17 (A-155), the issue of tax assessment as follows:

> **...16. The lands hereinabove described have been illegally assessed for the purposes of taxation for many years, including the year 1973 to date and taxes have been illegally levied, imposed and, in part, collected from the plaintiff thereon by the defendant in the aggregate amount on said assessments...(emphasis added).**
>
> **...17. That each time payment of the aforesaid taxes was tendered it was accompanied by notice that payment was being made under protest. Furthermore, the Village Clerk of the Village of Baldwinsville, New York, and the Commissioner of Finance of Onondaga County was otherwise notified of plaintiff Kahre-Richardes Family Foundation, Inc.'s tax exempt status.**

The Amended Complaint in State Court, in paragraph 16, clearly alleges that the Petitioners paid only "...part..." of the taxes. This paragraph cannot be reasonably interpreted to allege that Petitioners had paid all of the real estate taxes due on the property in question.

Secondly, Petitioners state in their Brief, at page 9-10, "...In the State Court proceeding, the issue of the payment has never been litigated...".

This statement is also incorrect. Paragraph numbered 16 of the Second Amended State Court Complaint (A-155) set forth in full above alleges that the property in question had "...been illegally assessed for the purposes of taxation..." (Emphasis added) and taxes were collected in part. The State Court held in its Decision (A-246-252) against Petitioners which provides in part at A-248-249 as follows:

> **...The Court presently has before it motions by Robroy, Susan Weichert and Robert Weichert for summary judgment dismissing the complaint and the replies and granting judgment under Section 1521 of the Real Property Actions and Proceedings Law declaring the validity of the claims of Robroy and Susan Weichert to the property. The motion is based on the recent decision in Kahal Bnei v. Fallsburg (78 NY2d 194) which held that an action by a religious corporation for judgment declaring invalid a 1987 real property tax assessment on the ground that the property is mandatorily exempt under Section 420-a of Real Property Tax Law was properly dismissed as time-barred, having been commenced more than four months after the 1987 assessment became final. The Kahal Court noted that the challenge to the assessment on the ground that the property was exempt was essentially a challenge to the taxing authority's jurisdiction over the subject property and thus could have been raised in a CPLR Article 78 proceeding. The Court therefore concluded that the limitations period applicable to such a proceeding governed the action regardless of the form in**

which the action was brought (see, Solnick v. Whalen, 49 NY2d 224, 229).

Here, according to the undisputed affidavit of Janet St. John, Village Clerk of the Village of Baldwinsville, the village assessments for the year 1975 to 1980 were final on January 1 of the year in question, i.e., the assessment for the year 1975 was final on January 1, 1975. No issue as to the Foundation's having received timely notice of the assessment is raised. The record contains no evidence of a timely challenge to the assessment which formed the basis for the tax deed in issue. The action herein was not commenced until April 3, 1980. Accordingly, the claim of the Foundation and Pritchard that the tax deed is invalid because the underlying assessment is invalid is time-barred and is unavailable to Pritchard in pursuing his complaint and to Pritchard and the Foundation in defense of the counterclaims under Article 15 of the Real Property Actions and Proceedings Law.

This Decision has been upheld by the New York State Appellate Division, Fourth Department (A-196-199) and the State Court of Appeals denied leave to review same (A-200-201).

Thirdly, Petitioners' Brief at page 4 at the second unnumbered paragraph provides:

...The Petitioners alleged that in every State Court proceeding, the public officials misrepresented payment of the taxes by Petitioners, either by concealing the fact of

payment, or by mischaracterizing the payment of the taxes on December 15, 1976 as payment of the 1976 taxes, rather than as a redemption of the 1975 tax sale certificate sold on February 16, 1976.

Petitioners erroneously claim throughout their Brief that the 1975 taxes had been paid.

Petitioners want this Court to believe that a $551.19 payment (A-90) which was for the 1976 taxes (A-89) also included the unpaid 1975 Village Taxes (A-88); and that somehow the prior attorneys for Petitioners never raised this issue during twelve (12) years of State litigation. The receipt at A-89 is entitled "Village of Baldwinsville Statement of Taxes, Tax of 1976", and provides the "total amount paid" of $551.19" is quite logically the payment of the Village 1976 taxes for the property in question (including water, sewer and interest and penalties); nothing more and nothing less. "A-89" does not in any way provide, say, or imply, that it is also a Statement of Taxes for the 1975 Village real estate taxes as set forth in A-88. The Affidavit of Donald Colon (A-298-301) who was Mayor of the Village of Baldwinsville from 1972 to 1981 and the Village Treasurer from 1982 to present, which Affidavit was given in support of the Villages' motion for summary judgment in the Court below provides in full in paragraphs 6 and 7 as follows:

6. On December 22, 1994, I gave a deposition to plaintiff's attorney, under oath, wherein I testified for approximately four (4) hours answering questions posed by plaintiffs' attorney. At said deposition, the Village Clerk for the Defendant, Village of Baldwinsville, and I produced all records in possession of the Village subpoenaed by plaintiffs' attorney.

7. The records for the Village of Baldwinsville show, as testified to by me at said deposition as follows relative to the property in question:

a. On or about March 1, 1975, plaintiffs were duly mailed a 1975 Statement of Taxes for the property in question showing the amount of $270.00 for the 1975 taxes, (Exhibit 8 of the Complaint, except the "received payment from" and "interest and penalties" sections would have been blank).

b. The plaintiffs did not, and at no time have they ever, paid said 1975 tax bill.

c. That at no time did the plaintiffs ever apply to the Village of Baldwinsville administratively for tax exemption status for said property.

d. On or about December 1975 after being duly published and noticed, a tax sale certificate for said property was offered for sale.

e. On or about February 16, 1976, Robroy Pools, Inc., by its president, the defendant herein, Robert Weichert, issued a check made payable to the Village of Baldwinsville in the amount of $303.25 and received the tax sale certificate for the property in question. Said check is Exhibit "7" of the Complaint.

f. On or about March 1, 1976, plaintiffs were duly mailed a 1976 Statement for Taxes

for the property in question showing the total 1976 taxes due in the amount of $517.59, (Exhibit "9" of the Complaint except the "received payment from" and "interest and penalties" would have been blank).

g. On or about December 15, 1976, the plaintiffs paid the 1976 taxes due and interest and penalties thereon in the amount of $551.59, Exhibit "10" of he Complaint.

h. That when the plaintiffs paid the 1976 taxes, as set forth above, they only paid the 1976 taxes, and plaintiffs did not pay the 1975 taxes.

i. That the Village, after receiving proof that a notice of redemption was served and the Five Dollar ($5.00) statutory fee, did issue a tax deed for said property to the defendant, Robroy Pools, Inc., on or about the 27th day of October, 1978, filed in the Onondaga County Clerk's Office May 31, 1979 in Book of Deeds 2719 at page 65, Exhibit "11" of the Complaint (A-91-94). The Village of Baldwinsville did otherwise comply with all then applicable laws before issuing tax deed.

Contrary to Petitioners' contention at pages 4 and 13 of their Brief, that payment was concealed and misrepresented by Respondents, Mr. Colon's Affidavit clearly shows Petitioners had access to all of the fiscal records of the Village and no Certificate of Redemption was issued for the year 1975 because Petitioners did not pay the 1975 taxes.

Petitioners continue to misrepresent that the payment for the 1976 taxes paid the 1975 Village taxes also even though the check and receipt match the amount due for only the 1976 taxes and deny that this issue was litigated in the State Courts. As appears from the Briefs of both the Petitioners and Respondents, before the New York State Appellate Division (A-318 and A-332, respectively), it is clear that the issue of the payment of the 1975 taxes was raised by Petitioner (A-322, 323) and disputed by Respondents (A-347, 348) and finally determined in favor of Susan M. Weichert, Respondent, by orders of the Appellate Division, Fourth Department dated and entered November 19, 1993 (A-197). Petitioners have no check or receipt showing payment for the 1975 taxes and that is because they did not pay the 1975 taxes. There has been no miscarriage of Justice in the State Courts here.

Furthermore, Petitioners' Brief is replete with erroneous and misleading statements too numerous to enumerate herein which are presented as statements of fact, but which have no basis in fact and are not supported anywhere in the record.

Respondents, respectfully submit herein that, for the reasons hereinbefore set forth, and for the reasons stated in the bench decision of the Federal District Court below (A-37-43), and the summary order of the United Statess Court of Appeals of the Second Circuit, the Petitioners' Federal action is barred by the doctrine of res judicata/collateral estoppel as the law applies in the State of New York.

Although Petitioners did not allege or claim violations of their state or federal civil and constitutional rights in the state actions, these are claims which could or should have been litigated in those actions but were not. There are no barriers in the New York State Courts to full and complete litigation of Petitioners' claims for civil rights and constitutional relief. Furthermore, it is clear from Petitioners' complaint that their claims of violations of their alleged civil and constitutional rights arise out of the exact same set of facts and circumstances as have already been fully litigated in the New York State Courts.

In this case, the New York Court had the power to grant Petitioners the relief sought in the present action in the Federal Courts. Therefore, Petitioners' issues and claims are precluded and summary judgment was appropriately granted. **Burgos v. Hopkins, 14 F.3rd 787 (2nd Cir. 1994); Williams v. Ward, 556 F.2d 1143, 1154 (2nd Cir., cert. dismissed, 434 US 944, continue 98 S. Ct. 469, 54 L. Ed. 2d 323) 1977).**

The Petitioners' claims, that the identity of the parties and issues in the State Court are not the same as in the Federal Court, are without merit. (*See decision of Judge Scullin relevant to the New York Law on the Doctrine of Res Judicata*, Appendix to the Petition, 2-4; 9-15).

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Dated: August 23, 1996.

Respectfully Submitted,

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APPENDIX

Appendix A - September 29, 1995 Appellate Division Order (Appeal No. 1)

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, FOURTH JUDICIAL DEPARTMENT

PRESENT: PINE, J. P., WESLEY, CALLAHAN AND DAVIS, JJ.

KAHRE-RICHARDES FAMILY FOUNDATION, INC., AND THE PANAMERICAN-PANAFRICAN ASSOCIATION, INC., AS SUCCESSOR IN INTEREST TO THE PANAMERICAN ASSOCIATION FOR THE FESTIVAL OF THE NEW WORLD, INC., AND ROBERT S. PRITCHARD, HENRY G. POLGAR, ANTOINE J. POLGAR, AND KEVIN J. POWELL, INDIVIDUALLY AND AS RESIDENTS OF THE SUBJECT PROPERTY KNOWN AS "APPLECREST",

Appellants,

v.

VILLAGE OF BALDWINSVILLE, COUNTY OF ONONDAGA, ROB ROY POOLS, INC., AND SUSAN M. WEICHERT,

Respondents.

(APPEAL NO. 1.)

The above named Kahre-Richardes Family Foundation, Inc., and the Panamerican-Panafrican Association, Inc., as Successor in Interest to the Panamerican Association for the Festival of the New World, Inc., and Robert S. Pritchard, Henry G. Polgar, Antoine J. Polgar, and Kevin J. Powell, Individually and as Residents of the Subject Property Known as "Applecrest", having appealed to this Court from the Order of the Supreme Court, entered in the Onondaga County Clerk's Office on

August 3, 1994, and said appeal having been argued by Barbara Sims of counsel for appellants, John Engelbrecht of counsel for respondents, and due deliberation having been had thereon,

It is hereby ORDERED, That the Order so appealed from be and the same hereby is unanimously affirmed without costs, judgment is ordered imposing sanction and the matter remitted to Supreme Court for further proceedings in accordance with the following Memorandum that is hereby made a part hereof.

Entered: September 29, 1995. CARL. M. DARNALL, Clerk

Appendix B - Memorandum Decision of the Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department

1118. (Onondaga Co.)--
KAHRE-RICHARDES FAMILY FOUNDATION, INC., AND THE PANAMERICAN-PANAFRICAN ASSOCIATION, INC., AS SUCCESSOR IN INTEREST TO THE PANAMERICAN ASSOCIATION FOR THE FESTIVAL OF THE NEW WORLD, INC., AND ROBERT S. PRITCHARD, HENRY G. POLGAR, ANTOINE J. POLGAR, AND KEVIN J. POWELL, INDIVIDUALLY AND AS RESIDENTS OF THE SUBJECT PROPERTY KNOWN AS "APPLECREST", Appellants v. VILLAGE OF BALDWINSVILLE, COUNTY OF ONONDAGA, ROB ROY POOLS, INC., AND SUSAN M. WEICHERT, Respondents. (APPEAL NO. 1)----------
Order unanimously affirmed without costs, judgment ordered imposing sanction and matter remitted to Supreme Court for further proceedings in accordance with the following Memorandum: We affirm for reasons stated in the decision at Supreme Court (Stone, J.). We add only that these appeals are a continuing effort by plaintiffs' counsel "to delay or prolong the resolution of the litigation".(22 NYCRR 130-1.1 [c][2] and we therefore order that judgment be entered in accordance with 22 NYCRR 130-1.2 imposing a sanction against plaintiffs' counsel in the amount of $500.00. Further, we conclude that plaintiffs' counsel should compensate defendants for "costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees" as a result of these appeals (22 NYCRR 130-1.1 [a]. Plaintiffs and their counsel have been given a reasonable opportunity to be heard in connection with defendants' request for sanctions against plaintiffs (see, 22 NYCRR 130-1.1 [d]. Therefore, we remit the matter to Supreme Court for a hearing to determine the "costs

in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees" (22 NYCRR 130-1.1[a] and for an order directing that judgment be entered therefor in accordance with 22 NYCRR subpart 130-1 (see Board of Educ. v. Allen, 192 AD2d 1099, 1100, appeal dismissed 82 NY2d 846). (Appeal from Order of Supreme Court, Onondaga County, Stone, J.-Summary Judgment.) PRESENT: PINE, J. P., WESLEY, CALLAHAN AND DAVIS, JJ. (Sept. 29, 1995.)

Appendix C - September 29, 1995 Appellate Division Order (Appeal No. 2)

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, FOURTH JUDICIAL DEPARTMENT

PRESENT: PINE, J.P., WESLEY, CALLAHAN AND DAVIS, JJ.

KAHRE-RICHARDES FAMILY FOUNDATION, INC., AND THE PANAMERICAN-PANAFRICAN ASSOCIATION, INC., AS SUCCESSOR IN INTEREST TO THE PANAMERICAN ASSOCIATION FOR THE FESTIVAL OF THE NEW WORLD, INC., AND ROBERT S. PRITCHARD, HENRY G. POLGAR, ANTOINE J. POLGAR, AND KEVIN J. POWELL, INDIVIDUALLY AND AS RESIDENTS OF THE SUBJECT PROPERTY KNOWN AS "APPLECREST",

Appellants,

v.

VILLAGE OF BALDWINSVILLE, COUNTY OF ONONDAGA, ROB ROY POOLS, INC., AND SUSAN M. WEICHERT,

Respondents.

(APPEAL NO. 2.)

The above named Kahre-Richardes Family Foundation, Inc., and the Panamerican-Panafrican Association, Inc., as Successor in Interest to the Panamerican Association for the Festival of the New World, Inc., and Robert S. Pritchard, Henry G. Polgar, Antoine J. Polgar, and Kevin J. Powell, Individually and as Residents of the Subject Property known as

"Applecrest", having appealed to this Court from the Order of the Supreme Court, entered in the Onondaga County Clerk's Office on November 3, 1994, and said appeal having been argued by Barbara Sims of counsel for appellants, John Engelbrecht of counsel for respondents, and due deliberation having been had thereon,

It is hereby ORDERED, That the Order so appealed from be and the same hereby is unanimously affirmed without costs, judgment is ordered imposing sanction and is remitted to Supreme Court for further proceedings in accordance with the same Memorandum as in Kahre-Richardes Family Foundation, v. Village of Baldwinsville ([appeal No. 1] __AD2d__ [decided Sept. 29, 1995]).

Entered: September 29, 1995. CARL M. DARNALL, Clerk

Appendix D - Memorandum Decision of the Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department

1119. (Onondaga Co.)--
KAHRE-RICHARDES FAMILY FOUNDATION, INC., AND THE PANAMERICAN-PANAFRICAN ASSOCIATION, INC., AS SUCCESSOR IN INTEREST TO THE PANAMERICAN ASSOCIATION FOR THE FESTIVAL OF THE NEW WORLD, INC., AND ROBERT S. PRITCHARD, HENRY G. POLGAR, ANTOINE J. POLGAR, AND KEVIN J. POWELL, INDIVIDUALLY AND AS RESIDENTS OF THE SUBJECT PROPERTY KNOWN AS "APPLECREST", Appellants v. VILLAGE OF BALDWINSVILLE, COUNTY OF ONONDAGA, ROB ROY POOLS, INC., AND SUSAN M. WEICHERT, Respondents. (APPEAL NO. 2)----------

Order unanimously affirmed without costs, judgment ordered imposing sanction and matter remitted to Supreme Court for further proceedings in accordance with same Memorandum as in Kahre-Richardes Family Foundation v. Village of Baldwinsville ([appeal No. 1] __AD2d__ [decided herewith]). (Appeal from Order of Supreme Court, Onondaga County, Stone, J. - Sanctions.) PRESENT: PINE, J.P., WESLEY, CALLAHAN AND DAVIS, JJ. (Sept. 29, 1995.)